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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,176	04/21/2004	Joel D. Martz	3285A	7731
7590	11/14/2008		EXAMINER	
DAVID M. WARREN 655 OAKLAND AVE. CEDARHURST, NY 11516			SINGH, ARTI R	
		ART UNIT	PAPER NUMBER	
		1794		
			MAIL DATE	DELIVERY MODE
			11/14/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/830,176	MARTZ, JOEL D.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Arti Singh	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 August 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) \_\_\_\_\_ is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-13 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 08/29/08 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 08/29/08 have been fully considered but they are not persuasive. Applicant has amended the claims to state that there is a difference in pore size between the two layers. This feature is seen in USPN 6074738 and is shown again below. This has already been shown and attested by the Board of Patent Appeal and Interferences, and thus the rejection below is restated and maintained. Applicant has filed an RCE and as a courtesy the Examiner is not making this action final, however, the Examiner maintains her position with the rejection set forth below.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6074738 issued to von Fragstein et al.

USPN 6074738 discloses a flexible laminate, which are especially, suited for water-resistant but water vapor permeable textile materials (column 1, lines 10-15). In the broadest aspects of the invention a microporous polymer layer (a) is adhered to an air impermeable polymer layer (b). The microporous layer has voids through the internal structure, which forms an interconnected continuous air path from one side to another. Both layers may chemically be the same, however in a preferred aspect the microporous polymer layer is polytetrafluoroethylene (column 2). Said layer can also be made of polyethylene or polyamide or polyesters (column 3, lines 47-53). The layer thicknesses, densities and pore size of the layers can vary depending upon the application (column 6, lines 43-45). In Example 11 the composite that is prepared is a microporous PTFE having a pore size of 0.25 microns and a weight of 20 g/m<sup>2</sup>, which is coated with a polyurethane resin. This example combined with that of Example 3 indicate that the thickness of the microporous layer is a lot thicker than that of the coating layer. However, it is the position of the Examiner that thickness of the composite or its individual layers are all result effective variables and that optimizing the thickness of any of the layers would directly affect the strength of the laminate. Therefore, it would have been obvious to a skilled artisan to use a coating in the thickness of 0.5 –10 microns in the laminate of von Fragstein et al, since it has been held that discovering an optimum value of a result effective variable involves only

routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized the thickness of the coating layer to be 0.5-10 microns, motivated by the desire to obtain a composite that is flexible.

With regard to the ASTM test standards in claims 8-11, it is the position of the Examiner that if structurally and chemically the article is the same then testing it against any standard should provide the same test results and would be inherent to article.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arti Singh whose telephone number is 571-272-1483. The examiner can normally be reached on M-R 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arti Singh/  
Primary Examiner  
Art Unit 1794

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